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11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13  
14 FEDERAL TRADE COMMISSION  
15 Plaintiff,  
16 v.  
17 MICROSOFT CORPORATION,  
18 and  
19 ACTIVISION BLIZZARD, INC.,  
20 Defendants.  
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Case No. 23-cv-02880-JSC

**NON-PARTY NINTENDO OF AMERICA  
INC. STATEMENT PURSUANT TO  
LOCAL RULE 79-5(f) AS TO WHY ITS  
CONFIDENTIAL INFORMATION IN  
DKT. NOS. 111 AND 111-43  
(DEFENDANTS' MEMORANDUM OF  
LAW IN OPPOSITION TO MOTION FOR  
PRELIMINARY INJUNCTION) SHOULD  
BE FILED UNDER SEAL**

1 Pursuant to N.D. Cal. Civil Local Rule 79-5, Non-Party Nintendo of America Inc.  
 2 (“NOA”) hereby submits this Statement as to why its confidential information contained in  
 3 Defendants Microsoft Corp. and Activision Blizzard, Inc. (collectively, “Defendants”)  
 4 Memorandum of Law in Opposition to Motion for Preliminary Injunction (Dkt. No. 111,  
 5 “Memorandum”) and accompanying exhibit (Dkt. No. 111-43) be filed under seal (the  
 6 “Statement”).

7 **I. ARGUMENT**

8 On June 16, 2023, Defendants filed their Memorandum and accompanying exhibits.  
 9 (Dkt. No. 111). The Memorandum cites to an NOA witness’s deposition that was taken during  
 10 the course of discovery in *In the Matter of Microsoft Corp. and Activision Blizzard, Inc.*, before  
 11 the FTC Office of Administrative Law Judges, Docket No. 9412, the entire transcript of which is  
 12 attached to Defendants’ Memorandum as Exhibit 47 (Dkt. No. 111-43). NOA previously filed  
 13 an Unopposed Motion for Order Changing Time on June 22, 2023, to extend the deadline to file  
 14 its L.R. 79-5 Statement relating to Defendants’ Memorandum to Tuesday, June 27 by 5:00 pm  
 15 PT (Dkt. No. 188), which the Court granted. (Dkt. No. 190).

16 The transcript at issue (Dkt No. 111-43) has been marked by Plaintiff as PX7059 for the  
 17 purposes of these proceedings. Yesterday, on June 26, 2023, NOA filed its L.R.79-5(f)  
 18 Statement regarding PX7059, and asked the Court to seal PX7059 in its entirety or, in the  
 19 alternative, to seal portions of the transcript according to the confidentiality groupings described  
 20 in NOA’s filing. (*See* Dkt. No. 219). For the reasons discussed in yesterday’s Statement (Dkt.  
 21 No. 219), NOA respectfully requests that the reference to PX7059 on page 11 n.7 of Defendants’  
 22 Memorandum be kept under seal. NOA further requests that the entirety of Dkt. No. 111-43 be  
 23 kept under seal, for the reasons discussed in the Statement NOA filed yesterday regarding  
 24 PX7059 (Dkt. 219), or, alternatively, that the portions of the transcript designated in Dkt. 219 be  
 25 redacted and kept under seal.

26 **II. CONCLUSION**

27 For the foregoing reasons, Non-Party NOA respectfully request the Court to keep sealed

1 the reference to NOA's witness transcript at page 11 n.7 of Defendants' Memorandum (Dkt.  
2 111). NOA further respectfully requests that the Court keep Dkt. No. 111-43 sealed in its  
3 entirety or, alternatively, that the portions of Dkt. No. 111-43 identified as confidential in NOA's  
4 Statement (Dkt. No. 219) be redacted and kept under seal.

5 Dated: June 27, 2023

VENABLE LLP

6 */s/ Steven E. Swaney*  
7 By: \_\_\_\_\_  
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